

## 48A C.J.S. Judges § 216

Corpus Juris Secundum | September 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VIII. Liabilities

#### A. General Considerations

##### § 216. Absolute or limited immunity

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  36

**While it has been broadly stated that the doctrine of judicial immunity is absolute, the doctrine is not unlimited, and it should not be applied broadly and indiscriminately but only to the extent necessary to effect its purpose.**

It has been broadly stated that judicial immunity is absolute immunity.<sup>1</sup> This immunity is not only an immunity from damages but also an immunity from suit itself.<sup>2</sup> Accordingly, the judge is immune regardless of the motives or intent with which his or her judicial acts are performed,<sup>3</sup> whether the judge acts in good faith<sup>4</sup> or bad faith,<sup>5</sup> or maliciously or corruptly.<sup>6</sup> For the corrupt acts of a judge, the only remedy is by impeachment or other form of disciplinary proceeding.<sup>7</sup>

Despite such statements, it has been said that the doctrine of judicial immunity is not absolute and unlimited.<sup>8</sup> On the contrary, application of the doctrine is restricted to its single objective of protecting judicial freedom in the delicate process of deciding civil and criminal matters on

their merits.<sup>9</sup> Judges should render decisions according to their conscientiously held views of prevailing law without fear of provoking a misconduct investigation.<sup>10</sup> For these very reasons, judges have absolute immunity from civil liability for their decisions, a principle fully applicable to misconduct proceedings.<sup>11</sup> Where the initiative and independence of the judiciary will not be effectively impaired, courts have refused to apply the doctrine of judicial immunity.<sup>12</sup> Thus, the doctrine should not be applied broadly and indiscriminately but only to the extent necessary to effect its purpose.<sup>13</sup> Even so, the rule is a harsh one, laden with potential for unredressed wrong.<sup>14</sup>

### ***Statutory abrogation of immunity.***

A statute making judges personally liable for any willful violation of law in granting injunctions and appointing receivers abrogates the doctrine of judicial immunity.<sup>15</sup>

## **CUMULATIVE SUPPLEMENT**

### **Cases:**

Act of disbarring an attorney as a sanction for the attorney's contumacious conduct in connection with a particular case is a judicial act to which absolute judicial immunity applies, whereas a committee, in making decisions as to additions to or deletions from a roster of attorneys deemed qualified to represent indigent defendants accused of crimes, unconnected to any particular criminal prosecution, is not performing a quasi-judicial function, and would not be entitled to absolute immunity. [Libertarian Party of Erie County v. Cuomo](#), 970 F.3d 106 (2d Cir. 2020).

Even grave procedural errors or acts taken when no statute purports to confer on the court the authority purportedly exercised will not deprive a judge of absolute judicial immunity. [Bright v. Gallia County, Ohio](#), 753 F.3d 639 (6th Cir. 2014).

Absolute immunity is available for judges who hold a litigant in contempt even when they are not in their robes, nor in the courtroom itself. [Rockett as next friend of K.R. v. Eighmy](#), 71 F.4th 665 (8th Cir. 2023).

State court judge's actions during custody proceedings in personally escorting two minor children to jail, standing there while they removed their clothes and belongings, and personally coming back an hour later to release them, in order to teach them a lesson when they refused to back down from their resistance to leaving Hollywood to live with mother temporarily, were nonjudicial and thus, not entitled to judicial immunity from father's § 1983 action alleging violation of children's First, Fourth, and Fourteenth Amendment rights, since children could not be held in contempt for

disorderly contemptuous or insolent behavior because they were not present in the courtroom, and even assuming judge could have ordered someone else to take the children to jail, he could not put them there himself under state law. U.S. Const. Amends. 1, 4, 14; 42 U.S.C.A. § 1983; Mo. Ann. Stat. §§ 211.131(1), 476.110(1). Rockett as next friend of K.R. v. Eighmy, 71 F.4th 665 (8th Cir. 2023).

Father's claims against judge for actions taken in child custody proceeding were barred by the doctrine of official immunity; father's civil rights claim was based on an order allegedly requiring him to sit for a psychological examination, an order allegedly directing his incarceration for failure to sit for the psychological examination, and an order related to the custody of his child, and father did not plausibly allege that the orders were made outside judge's judicial capacity, nor did he plausibly allege that judge did not have jurisdiction over him. *Nezbeda v. Liberty Mutual Insurance Corporation (LIC)*, 306 F. Supp. 3d 1335 (N.D. Ga. 2017).

The single limitation placed on a judge's absolute immunity is jurisdictional: a judge opens himself to liability when he acts in the clear absence of all jurisdiction, whether he acts without subject-matter or personal jurisdiction. *Lasko v. American Bd. of Surgery*, 47 F. Supp. 3d 1122 (D. Nev. 2014).

A judge is immune from all forms of suit unless he has acted either beyond his judicial capacity, or in the complete absence of all jurisdiction. *Pacherille v. Burns*, 30 F. Supp. 3d 159 (N.D. N.Y. 2014).

Connecticut affords absolute quasi-judicial immunity from damages actions sounding both in defamation and tortious interference. *Khan v. Yale University*, 27 F.4th 805 (2d Cir. 2022) (applying Connecticut law).

## [END OF SUPPLEMENT]

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### Footnotes

1 U.S.—*Butz v. Economou*, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978); *Bauer v. Texas*, 341 F.3d 352 (5th Cir. 2003).  
Ark.—*Chambers v. Stern*, 338 Ark. 332, 994 S.W.2d 463 (1999).  
Tex.—*In re Lincoln*, 114 S.W.3d 724 (Tex. App. Austin 2003).

2 U.S.—*Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); *Marczeski v. Handy*, 213 F. Supp. 2d 135 (D. Conn. 2002).

Okla.—[Allen v. Zigler](#), 2002 OK CIV APP 30, 41 P.3d 1060 (Div. 1 2001).

3 U.S.—[Guzman-Rivera v. Lucena-Zabala](#), 642 F.3d 92 (1st Cir. 2011); [Heasley v. Davies](#), 342 F.2d 786 (8th Cir. 1965).

Iowa—[Huendling v. Jensen](#), 168 N.W.2d 745 (Iowa 1969).

**Malevolent motive**

A judicial officer, acting in the exercise of a judicial function, is not liable to a party injured by an erroneous decision, however malevolent the motive which inspired it.

Ind.—[Cato v. Mayes](#), 270 Ind. 653, 388 N.E.2d 530 (1979).

**Willful acts**

Ordinarily a judge is immune from suit for damages even when the acts are willful.

Wis.—[Candee v. Egan](#), 84 Wis. 2d 348, 267 N.W.2d 890 (1978).

4 U.S.—[Skolnick v. Campbell](#), 398 F.2d 23 (7th Cir. 1968).

5 U.S.—[Chisum v. Colvin](#), 276 F. Supp. 2d 1 (D.D.C. 2003).

Fla.—[Kalmanson v. Lockett](#), 848 So. 2d 374 (Fla. 5th DCA 2003).

6 U.S.—[Stump v. Sparkman](#), 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); [Pierson v. Ray](#), 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).

Fla.—[Kalmanson v. Lockett](#), 848 So. 2d 374 (Fla. 5th DCA 2003).

Nev.—[State v. Second Judicial Dist. Court ex rel. County of Washoe](#), 118 Nev. 609, 55 P.3d 420 (2002).

N.Y.—[Rosenstein v. State](#), 37 A.D.3d 208, 829 N.Y.S.2d 93 (1st Dep't 2007).

7 Cal.—[Wyatt v. Arnot](#), 7 Cal. App. 221, 94 P. 86 (3d Dist. 1907).

Iowa—[Huendling v. Jensen](#), 168 N.W.2d 745 (Iowa 1969).

As to disciplinary proceedings, see §§ 119 to 140.

8 U.S.—[Sparks v. Duval County Ranch Co., Inc.](#), 604 F.2d 976 (5th Cir. 1979), judgment aff'd, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980); [Doe v. Lake County, Indiana](#), 399 F. Supp. 553 (N.D. Ind. 1975).

**Perimeters of doctrine not limitless but broad**

U.S.—[Thompson v. Montemuro](#), 383 F. Supp. 1200 (E.D. Pa. 1974).

9 U.S.—[Shore v. Howard](#), 414 F. Supp. 379 (N.D. Tex. 1976).

10 U.S.—[In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability](#), 517 F.3d 558 (U.S. Jud. Conf. 2008).

11 U.S.—[In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability](#), 517 F.3d 558 (U.S. Jud. Conf. 2008).

12 U.S.—[Shore v. Howard](#), 414 F. Supp. 379 (N.D. Tex. 1976).

13 U.S.—[Sparks v. Duval County Ranch Co., Inc.](#), 604 F.2d 976 (5th Cir. 1979), judgment aff'd, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980); [Thompson v. Montemuro](#), 383 F. Supp. 1200 (E.D. Pa. 1974).

14 U.S.—[Sparks v. Duval County Ranch Co., Inc.](#), 604 F.2d 976 (5th Cir. 1979), judgment aff'd, [449 U.S. 24](#), 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980).

15 Wis.—[Candee v. Egan](#), 84 Wis. 2d 348, 267 N.W.2d 890 (1978).

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